137

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. [illegible]

WILLIAM M. MAC FARLANE, PLAINTIFF IN ERROR,

vs.

THEODORE F. JACKSON, AS REGISTRAR OF ARREARS OF THE CITY OF BROOKLYN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

FILED JULY 23, 1887.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 981.

WILLIAM M. MAC FARLANE, PLAINTIFF IN ERROR,

vs.

THEODORE F. JACKSON, AS REGISTRAR OF ARREARS OF THE CITY OF BROOKLYN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, AUGUST 4, 1887.

1 *Appeal Papers.*

Court of Appeals.

WILLIAM M. MACFARLANE, Appellant,
against
THEODORE F. JACKSON, as Registrar of Arrears of the City of Brooklyn, Respondent.

James Stikeman, attorney for appellant, 18 Broadway, New York city; Almet F. Jenks, attorney for respondent, City Hall, Brooklyn.

2 UNITED STATES OF AMERICA, *ss:*

MACFARLANE
vs.
JACKSON, as Registrar of Arrears of the City of Brooklyn.

The President of the United States to the honorable the justices of the supreme court of the State of New York, in the second department, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea in the court of appeals of the State of New York, before the judges thereof, being the highest court of law or equity of the said State in which a decision could be had in the said suit between William M. Macfarlane, plaintiff, and Theodore F. Jackson, as registrar of arrears of the city of Brooklyn, defendant therein, wherein was drawn in question the validity of a statute of the State of New York on the ground of its being repugnant to the Constitution of the United States and the decision is in favor of the validity of such statute, a manifest error hath happened to the great damage of said William M. Macfarlane, as by his complaint appears,

3 which record was by the the said court of appeals remitted to you to be enforced according to law, and is now in your court, in the office of the clerk of the county of Kings in the said State.

We, being willing that error, if any hath been, should be duly corrected and full and speedy justice done the parties aforesaid in this behalf, do command you that, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court,, the sixth day of July, in the year of our Lord one thousand eight hundred and eighty-seven.

[Seal of U. S. Circuit Court, South. Dist. New York.]

TIMOTHY GRIFFITH, *Clerk.*

JOHN J. TOWNSEND,
Attorney, 76 Wall Street, New York City.
1—981

The foregoing writ is allowed.

SAM'L BLATCHFORD, *A. J. S. C.*

4 [Endorsed:] Supreme Court of the United States. William M. Macfarlane, plaintiff in error, against Theodore E. Jackson, as registrar, &c. Writ of error. John J. Townsend, attorney for plaintiff in error, No. 76 Wall St., New York. Filed July 8, 1887.

5 The answer of the justices of the supreme court of the State of New York, in the second department, in the within writ named, doth certify, under the seal of our said court, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, and send the record whereof mention in said writ is made, with all things touching or in anywise concerning the same, as appears in a certain schedule to this writ annexed, as within it is commanded.

By the court:

[Seal Kings County.]

JOHN M. RANKEN, *Clerk.*

6 The United States of America to Theodore F. Jackson, as registrar of arrears of the city of Brooklyn, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October A. D., 1887, pursuant to a writ of error filed in the clerk's office of the county of Kings, in the State of New York, wherein William M. Macfarlane is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the plaintiff in error, as in the said writ mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel Blatchford, one of the associate justices of the Supreme Court of the United States, this sixth day of July, in the year of our Lord one thousand eight hundred and eighty-seven.

SAMUEL BLATCHFORD.

JOHN J. TOWNSEND,
Attorney for Plaintiff in Error, 76 Wall Street, New York City.

7 UNITED STATES OF AMERICA, }
State of New York, County of Kings, } ss:

In the Supreme Court of the United States.

WILLIAM F. MACFARLANE, Plaintiff in Error,
against
THEODORE F. JACKSON, as Registrar of Arrears of the City of Brooklyn.

On the 16th day of July, 1887, before me, a notary public for the State of New York, duly authorized to administer oaths in the county aforesaid, personally appeared H. Rodman Hagner, in the city of Brooklyn, in said county of Kings, who, being by me duly

sworn, made oath that on the 8th day of July, 1887, at No. 45 Broadway, in the said city of Brooklyn, county of Kings, in the State of New York, he served upon Theodore F. Jackson, above-named personally a copy of the foregoing citation by delivering such copy — citation to the said Theodore F. Jackson personally and leaving the same with him.

Deponent further says that at the same time he also delivered to and left with the said Theodore F. Jackson a copy of the writ of error allowed in this cause, and also a copy of the bond to the defendant accompanying the same, with a notice of the filing
8 thereof; that he also at the same time exhibited to the said Theodore F. Jackson the foregoing original citation, and deponent knew the person so served to be the defendant above named.

H. RODMAN HAGNER,

In testimony whereof I have hereunto subscribed my name and affixed my official seal, at Brooklyn, in the county of Kings aforesaid, on the day and year aforesaid.

S. N. GARRISON,
Notary Public, Kings Co.

Sworn to before me this 16th day of July, 1887.
[Seal S. N. Garrison, Notary Public, Kings County, N. Y.]

S. N. GARRISON,
Notary Public, Kings Co.

9 [Endorsed:] Supreme Court of the United States. William M. Macfarland, plaintiff in error, against Theodore F. Jackson, as registrar, &c. Original citation and affidavit of service. John J. Townsend, attorney for plaintiff in error, No. 76 Wall street, New York.

10 *Summons.*

Supreme Court.

WILLIAM M. MACFARLANE, Plaintiff,
against
THEODORE F. JACKSON, as Registrar of Arrears of the City of Brooklyn, Defendant.

Trial to be had in the county of Kings.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer judgment will be taken against you by default for the relief demanded in the complaint.

Dated December 4th, 1885.

JAMES STIKEMAN,
Plaintiff's Attorney.

11 *Complaint.*

Supreme Court.

WILLIAM M. MACFARLANE
against
THEODORE F. JACKSON, as Registrar of Arrears of the City of Brooklyn.

Trial to be had in the county of Kings.

The complaint of the plaintiff, by James Stikeman, his attorney, respectfully shows—

That at divers times, stated in Schedule A, hereto annexed, at public auction, held by the collector of taxes and assessments of the city of Brooklyn for the sale of property for unpaid taxes and assessments, and by the registrar of the water department for unpaid water rates, pursuant to chapter 384 of the laws of 1854 and the acts amendatory thereof, he purchased several lots of land, which were sold for the non-payment of taxes, assessments, and water rates, and which were known by the numbers specified in said Schedule A, respectively, each for a term of years, and paid for each lot the sum set opposite the number thereof in said Schedule A, and received from the said collector a certificate of sale of each lot, bearing the date specified in said Schedule A, each declaring him entitled to a lease of the lot therein mentioned for a term of years after the expiration of two years from the date thereof, unless said premises be redeemed within that time.

That at divers times, stated in Schedule B, hereto annexed, at public auction, held by the registrar of arrears of the city of Brooklyn for the sale of property for unpaid taxes, assessments, and water rates, pursuant to chapter 863 of the laws of 1873 and
12 the acts amendatory thereof, he purchased several lots of land, which were sold for non-payment of taxes, assessments, and water rates, and which were known by the numbers specified in said Schedule B, respectively, each for a term of years, and paid for each lot the sum set opposite the number thereof in said Schedule B, and received from the said registrar a certificate of sale of each lot, bearing the date specified in said Schedule B, each declaring him entitled to a lease of the lot therein mentioned for a term of years after the expiration of two years from the date thereof, unless said premises be redeemed within that time.

All of said certificates are recorded in the office of the defendant.

That none of the said lots have been redeemed from said sale, and that the plaintiff is still the legal owner and holder of said certificates.

That on the 6th day of June, 1885, an act was passed by the Legislature of the State of New York entitled "An act to amend chapter 863 of the laws of 1873, entitled 'An act to amend the charter of the city of Brooklyn and the various amendments thereof.'"

That the fifteenth section of said act is in the words following, to wit:

"§ 15. None of the provisions of this act hereinbefore contained shall affect any sale for taxes, assessments, or water rates heretofore made in said city, or the rights of the parties or the proceedings thereunder, but the same shall remain the same as though this act had not been passed: Provided, however, That no action or special proceeding shall hereafter be brought or maintained against the city of Brooklyn or the registrar of arrears of said city to compel the execution or delivery of a lease upon any sale for taxes, assessments, or water rates made more than eight years prior to the passage of this act, unless such action or special proceeding is commenced within six months after the passage of this act and notice
13 thereof filed in the office of the registrar of arrears, but this provision shall not operate to extend any statute of limitations now applicable in such cases. And after the expiration of six months from the passage of this act it shall be the duty of the registrar of arrears to cancel in his office all such sales made more than eight years prior to the passage of this act, upon which no lease shall have been given and no action commenced, and notice thereof filed as aforesaid, within the period hereinbefore limited therefor, and thereupon the lien of all such certificates of sale shall cease and determine."

That, as plaintiff is advised by his counsel and verily believes, the said section of the said act is wholly unconstitutional and void.

That if the said sales be cancelled in the office of the defendant all public notice of the rights and lien of the plaintiff in the premises will be wholly destroyed, and the plaintiff will sustain irreparable injury and damage.

That, nevertheless, the said defendant threatens and is about to cancel the said sales in his office regardless of the rights of the plaintiff.

Wherefore the plaintiff demands judgment that the defendant, his successors, agents, clerks, and servants, be perpetually enjoined and restrained from cancelling the said sales or the record thereof in his office.

And for such other relief as to the court may seem proper.

JAMES STIKEMAN,
Attorney for Plaintiff.

COUNTY OF KINGS, *ss:*

William M. Macfarlane, being duly sworn, says that he is the plaintiff in this action, and that the foregoing complaint is true to his own knowledge.

W. M. MACFARLANE.

Sworn to before me this 5th day of December, 1885.

H. RODMAN HAGNER,
Notary Public for Kings Co.

14 SCHEDULE A.

Register.	No.	Date.	Amount.
Liber 1	335	March 17, 1868	$25 78
Liber 2	570	February 25, "	4 75
	1204	April 21, "	6 78
	1205	" " "	6 78
	1206	" " "	6 78
	1207	" " "	6 78
	1208	" " "	6 78
	1597	" " "	6 48
	1598	" " "	6 48
	1599	" " "	6 48
	1600	" " "	6 48
	1601	" " "	6 48
	1602	" " "	7 10
Liber 3	94	November 24, "	16 36
	620	December 1, "	21 10
Liber 5	202	November 22, 1870	2 82
	426	" " "	14 82
	428	" " "	14 82
	496	" 29, "	2 85
	587	" " "	16 36
	598	" " "	6 35
	623	" " "	13 28
	624	" " "	13 28
	625	" " "	4 81
Liber 6	207	December 6, "	12 51
	322	" " "	13 94
	334	" " "	6 07
	415	" " "	2 80
	700	" 13, "	15 37
	701	" " "	13 94
			295 41
15			295 41
Liber 6	703	December 13, 1870	19 66
	811	" " "	13 94
	911	" " "	2 83
	1080	" 20, "	6 07
	1456	November 28, 1871	10 00
Liber 7	103	" " "	15 78
	372	" " "	3 28
	489	December 5, 1871	13 01
	576	" " "	6 57
	863	" " "	17 30
	1059	" " "	6 57

Schedule A—Continued.

Register.	No.	Date.	Amount.
Liber 8	796	December 12, 1871	12 17
	1209	" 19, "	16 10
	1600	" " "	6 27
	1601	" " "	21 34
	1602	" " "	14 13
	1798	" " "	4 29
	2155	" 26, "	14 92
	3119	January 9, 1872	3 28
Liber 9	474	November 26, "	13 40
	829	" " "	12 10
	894	" " "	9 75
	1295	December 3, "	16 10
	1649	" " "	9 55
	1650	" " "	6 27
	1651	" " "	21 34
	1652	" " "	14 13
	1830	" " "	6 24
	2118	" 10, "	6 27
	2129	" " "	16 10
	2799	" " "	8 62
			642 79
16			642 79
Liber 9	3079	December 10, 1872	8 28
Liber 10	1059	" 17, "	17 28
	1673	" 23, "	23 23
	1783	" " "	12 10
	1946	" " "	19 24
	2692	" 30, "	19 66
	3390	" " "	7 46
	8391	" " "	18 47
	3392	" " "	18 17
	3678	" " "	7 46
	4201	January 7, 1873	8 63
	4237	" " "	21 00
	6493	" 14, "	3 48
Liber F	1717	May 5, 1870	8 24
	2199	" 7, "	18 00
	3055	" 10, "	8 65
	1198	" 3, "	12 27
Liber G	485	March 14, 1871	12 22
	1628	" 21, "	4 73
	1671	" " "	3 81
	1840	" " "	15 88

Schedule A—Continued.

Register.	No.	Date.	Amount.
	1858	March 21, 1871	37 79
	2886	" 23, "	14 56
	3333	" " "	7 99
	3513	" 28, "	98 79
Liber H	81	February 20, 1872	11 98
	562	" " "	4 11
	3020	" 23, "	6 35
Liber I	1368	March 25, 1873	29 72
	2811	April 22, "	157 93
	4139	January 28, "	7 49
	4147	March 25, "	13 91
			1,299 67
17			1,299 67
	4227*a*	March 25, 1873	4 49
	4402	January 28, "	5 42
	5125	" " "	10 20
	5175	February 25, "	11 72
	5368	March " "	11 37
	5369	" " "	11 37
	5643	January 28, "	8 15
	6173	March 25, "	22 20
	6180	" " "	5 55
	6677	" " "	8 29
			$1,398 44

JAMES STIKEMAN,
Plaintiff's Attorney.

WM. M. MACFARLANE.

Register.	No.	Date.	Amount.
Liber 32, Vol. 1	1912	February 9, 1875	$17 99
Vol. 2	2195	" 23, "	18 50
Vol. 2	2500	" " "	24 40
Vol. 3	1636	September 28, "	9 25
	1642	" " "	14 71
	6286	October 5, "	7 96
	6507	" " "	9 29
	6934	" " "	12 46
	7077	" " "	62 70
	7080	" " "	9 29
Liber K	106	September 29, 1874	11 06
	107	" " "	6 19
	183	" " "	13 97
	205	" " "	5 25
	344	" " "	72 00
	390	" " "	200 90
	581	" " "	6 54
	582	" " "	56 90
	583	" " "	31 68
	584	" " "	9 71
	585	" " "	8 44
	586	" " "	8 36
	868	October 6, "	9 27
	1360	" " "	13 04
Liber L	482	January 19, 1875	29 26
	483	" " "	16 96
	484	" " "	16 76
	485	" " "	16 76
	486	December 8, 1874	16 67
	487	January 19, 1875	16 76
			753 03
			753 03
Liber L	488	January 19, 1875	16 76
	489	" " "	16 76
	490	" " "	16 76
	541	December 8, 1874	12 53
	865	February 2, 1875	36 76
	864	" " "	56 61
	863	" " "	76 44
	1259	December 22, 1874	88 13
	1270	" " "	144 77
	1810	January 5, 1875	100 04
	2005	February 2, "	69 48

Schedule B—Continued.

Register.	No.	Date.	Amount.
	2006	February 2, 1875	69 48
	2404	January 19, "	110 08
Liber M	14	May 22, 1877	22 40
	17	" " "	44 03
	19	" " "	30 22
	34	July 25, 1876	6 58
	37	" " "	11 52
	46	" " "	14 20
	146	March 22, 1877	14 33
	178	" " "	15 33
	180	May 22, "	8 73
	202	July 25, 1876	7 11
	207	May 22, 1877	21 65
	312	" " "	23 06
	376	July 25, 1876	10 79
	378	March 22, 1877	11 05
	385	July 25, 1876	10 79
	416	March 22, 1877	4 30
	426	May 22, "	33 24
	427	" " "	21 85
			1,879 91
20			1,879 91
Liber M	443	July 25, 1876	6 65
	489	May 22, 1877	6 15
	423	March " "	12 10
	667	July 25, 1876	7 49
	678	March 22, 1877	7 33
	710	May " "	50 69
	734	" " "	12 94
	782	July 25, 1876	13 17
	800	" " "	6 03
	806	" " "	5 25
	827	" " "	9 48
	881	" " "	5 50
	882	" " "	5 40
	883	" " "	5 40
	886	" " "	5 47
	887	" " "	6 60
	947	May 22, 1877	6 35
	988	" " "	5 21
	1018	" " "	8 77
	1082	" " "	24 35
	1105	" " "	4 79

Schedule B—Continued.

Register.	No.	Date.	Amount.
	1111	May 22, 1877	16 92
	1193	" " "	11 46
	1196	" " "	22 78
			$2,086 19

JAMES STIKEMAN,
Plaintiff's Attorney.

W. M. MACFARLANE.

21 *Preliminary Injunction.*

Supreme Court, County of Kings.

WILLIAM M. MACFARLANE
against
THEODORE F. JACKSON, as Registrar of Arrears of the City of Brooklyn.

It appearing to my satisfaction from the verified complaint in this action that the defendant is about to cancel in his office the sales mentioned in the complaint in violation of the plaintiff's rights, and that the plaintiff will sustain irreparable injury thereby, and plaintiff having given the undertaking required by law:

Now, on motion of James Stikeman, attorney for the plaintiff—

It is ordered that the defendant, his deputy, clerks, and assistants, be, and they are hereby, enjoined and restrained from cancelling the sales mentioned in the complaint until the further order of the court.

And it is further ordered that the defendant show cause at a special term of this court, to be held at the court-house, in the city of Brooklyn, on the 12th day of December, 1885, at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, why the foregoing injunction should not be continued until the final judgment in this action, and why the plaintiff should not have such other relief as to the court may seem proper.

Dated December 5th, 1885.

EDGAR M. CULLEN, *J. S. C.*

22 At a special term of the supreme court, held at the court-house, in the city of Brooklyn, on the 25th day of February, 1886.

Present: Hon. Edgar M. Cullen, justice.

Order Denying Motion for Injunction.

WILLIAM M. MACFARLANE
against
THEODORE F. JACKSON, as Registrar of Arrears of the City of Brooklyn.

On the complaint in this action, verified by the plaintiff on the 5th day of December, 1885, and the injunction granted in this action on the same date, and the order to show cause why said injunction should not be continued until the final judgment in this action, and why the plaintiff should not have such other relief as to the court may seem proper, after hearing James Stikeman, Esq., on behalf of the plaintiff, and John A. Taylor, Esq., on behalf of the defendant, and on motion of Almet F. Jenks, attorney for the defendant—

It is ordered that the motion to continue the injunction granted in this action on the 5th day of December, 1885, enjoining and restraining the defendant, his deputy, clerks and assistants, from cancelling the sales mentioned in the complaint herein be, and the same hereby is, denied, and—

It is further ordered that said injunction be, and the same hereby is, in all respects vacated and set aside with ten dollars costs to the defendant.

(Endorsed: Filed April 10, 1886.)

23 *Demurrer.*

Supreme Court, Kings County.

WILLIAM M. MACFARLANE
against
THEODORE F. JACKSON, as Registrar of Arrears.

The defendant hereby demurs to the complaint of the plaintiff in this action on the ground that it appears on the face thereof that said complaint does not state facts sufficient to constitute a cause of action.

ALMET F. JENKS,
Attorney for Defendant.

At a special term of the supreme court, held at the court-house, in the city of Brooklyn, on the 20th day of April, 1886.

Present: Hon. Edgar M. Cullen, justice.

Order Sustaining Demurrer.

WILLIAM M. MACFARLANE
against
THEODORE F. JACKSON, as Registrar of Arrears.

The demurrer in this action coming on for argument, and
24 after hearing Almet F. Jenks, Esq., in support of said demurrer, and James Stikeman, Esq., in opposition thereto:

Now, on motion of Almet F. Jenks, attorney for the defendant— It is ordered that said demurrer be, and the same herby is, sustained, and that defendant have judgment thereon with costs.

Judgment, April 21, 1886.

Supreme Court, Kings County.

WILLIAM M. MACFARLANE
against
THEODORE F. JACKSON, as Registrar of Arrears.

The demurrer in this action having been argued, and a decision having been rendered sustaining said demurrer and ordering judgment thereon for the defendant with costs, and an order having been entered to that effect, and costs having been taxed at the sum of $55.75:

Now, on motion of Almet F. Jenks, attorney for the defendant— It is adjudged that the complaint herein be, and the same is hereby, dismissed, and that the defendant recover of the plaintiff the sum of $55.75, costs of this action.

JOHN M. RANKEN, *Clerk.*

25 *Notice of Appeal to General Term.*

Supreme Court.

WILLIAM M. MACFARLANE, Appellant,
against
THEODORE F. JACKSON, as Registrar of Arrears of the City of Brooklyn, Respondent.

Please to take notice that the plaintiff hereby appeals to the general term of this court from the judgment entered in this action in the office of the clerk of the county of Kings on the 21st day of April, 1886, dismissing the complaint with costs, and also from the order entered in said clerk's office on the 10th day of April, 1886, denying the plaintiff's motion for an injunction.

Yours, &c.,
JAMES STIKEMAN,
Appellant's Attorney, 18 *Broadway, New York City.*

Dated April 22d, 1886.

To Almet F. Jenks, attorney for respondent; John M. Ranken, Esq., clerk.

26 *Opinion by Cullen, J.*

Supreme Court.

WILLIAM M. MACFARLANE
against
THEODORE F. JACKSON, Registrar, etc.

Under the provisions of the charter the purchaser at a tax sale is entitled to a lease of the premises sold after the expiration of two years, unless the sale has been redeemed by the owner. The purchaser obtains for his purchase-money the right to possession of the land for the term for which it was sold. The statute, the validity

of which is assailed, directs that after the expiration of six months from the date of the act, as to sales made more than eight years previous, no lease shall be given, and the sales shall be canceled by the registrar of arrears. The effect of this is to compel the tax-buyer to take out a lease, or bring an action to foreclose the sale within six months or, in default thereof, to forfeit his purchase. No question is made that the time allowed by the act is not reasonable, but it is claimed that the right of the purchaser cannot be subjected to any limit not prescribed at the time of the sale to him. I think this claim untenable. It is settled by authority that the lien of a tax may be barred by the statute of limitations (Fisher *vs.* Mayor, etc., 67 N. Y., 73), and it seems conceded that a sale falls within the same rule (Jenkins *vs.* Fahey, 73 N. Y., 364). This court has held, in Orr *vs.* Remsen, that tax and assessment sales more than twenty years old, upon which no lease had been executed, did not constitute valid objections to a title offered a purchaser at a judicial sale.

27 If the claims of the tax-buyers are subject to any statute of limitations, it is undoubtedly within the power of the Legislature to shorten the time prescribed by the statute so long as a reasonable time is left after such alteration in which the claim may be enforced (Morse *vs.* Goold, 11 N. Y., 288; Hawkins *vs.* Barney, 5 Peters, 466; Cooley Constitutional Limitations, p. 357).

As before stated, the right acquired by the tax-buyer was the right to possession of the land. This right was vested and doubtless could not be invaded by legislation; but the Legislature might act on the remedy and prescribe any formalities to be observed by the buyer, and for a failure to comply with such formalities direct the forfeiture of the rights acquired, always provided that the substance of the contract was not affected. In this case the buyers had a right to a lease. That right is not taken away, but it is provided that the lease must be taken in six months, otherwise that the right be lost. In Butler *vs.* Palmer, 1 Hill, 324, mortgaged premises had been sold under foreclosure during the existence of a statute giving the mortgagor or his assignee the right to redeem at any time within one year from the sale. Subsequently the statute was repealed, the repeal to take effect on November 1st following, less than a year after the sale mentioned. It was held that the statute affected prior sales, and that the defendant's right to redeem was lost after November 1, 1838. I think the principle in this case is not to be distinguished from the one decided in the case cited. It follows that the act under consideration is valid, and that the motion for an injunction should be denied and the application for a mandamus granted, ten dollars costs to prevailing party in each case.

28 At a general term of the supreme court, held in and for the second judicial department, at the court-house, in the city of Poughkeepsie, on the 22d day of July, 1886.

Present: Hon. J. F. Barnard, P. J.; Hon. J. O. Dykman, Hon. Edgar M. Cullen, justices.

Order of Affirmance.

WILLIAM M. MACFARLANE
vs.
THEODORE F. JACKSON, Registrar.

The appeal from the judgment entered herein having been brought on for argument before this court—

Now, after hearing counsel for the respective parties, and due deliberation having been had thereon, it is ordered that the said judgment be, and the same hereby is, affirmed, with costs.

29 *Judgment of Affirmance.*

Supreme Court. General Term.

WILLIAM M. MACFARLANE
against
THEODORE F. JACKSON, Registrar of Arrears of the City of Brooklyn.

Judgment, December 10, 1886.

The appeal from the judgment entered herein having been argued, and a decision having been rendered affirming said judgment, with costs, and an order having been entered to that effect, and the costs having been taxed at the sum of sixty-seven $\frac{15}{100}$ dollars, now, on motion of Almet F. Jenks, attorney for the defendant—

It is adjudged that the judgment appealed from in this action be, and the same hereby is, affirmed; and it is further adjudged that the defendant, Theodore F. Jackson, as registrar of arrears of the city of Brooklyn, do recover of the plaintiff, William M. Macfarlane, the sum of sixty-seven $\frac{15}{100}$ dollars, the costs of this action.

JOHN M. RANKEN, *Clerk.*

30 *Notice of Appeal to the Court of Appeals.*

Supreme Court.

WILLIAM M. MACFARLANE, Appellant,
against
THEODORE F. JACKSON as Registrar of Arrears of the City of Brooklyn, Respondent.

Please to take notice that the plaintiff hereby appeals to the court of appeals from the judgment of the general term of the supreme court, entered in the office of the clerk of the county of Kings on the tenth day of December, 1886, affirming the judgment of the special term in the above-entitled action with costs.

Dated December 11th, 1886.

Yours, &c.,
JAMES STIKEMAN,
Attorney for Appellant, 18 *Broadway, New York City.*

To Albert F. Jenks, Esq., attorney for respondent; John M. Rankem, Esq., clerk.

STATE OF NEW YORK, } ss:
County of Kings, }

31 I, John M. Ranken, clerk of the county of Kings and clerk of the supreme court of the State of New York, in and for said county (said court being a court of record), do hereby certify that I have compared the annexed with the original judgment roll and notice of appeal filed in my office, and that the same are true transcripts thereof and of the whole of such originals.

In testimony whereof I have hereunto set my hand and affixed the seal of said county and court this 17th day of December, 1886.

JOHN M. RANKEN, *Clerk.*

Opinion of General Term.

Supreme Court. General Term.

WILLIAM M. MACFARLANE, Appellant,
against
THEODORE F. JACKSON, as Registrar, &c., Respondent.

James Stikeman for appellant, Almet F. Jenks for respondent.

DYKMAN, *J.:*

It is the object of this action to procure a perpetual injunction against the defendant, who is the registrar of arrears of the city of Brooklyn, which shall restrain and prevent the cancellation
32 of certain sales for taxes, and also the records of such sales in his office. The plaintiffs in these actions became purchasers at various sales of real property for unpaid taxes and assessments, and received certificates of such sales, bearing dates from March 17, 1868, to May 22, 1877, inclusive. By the terms of these certificates the holders were entitled to a lease of the lots designated therein, after the expiration of two years from their respective dates, unless they were redeemed, and if any irregularity was discovered they could recover the money paid, without interest. Such were the rights and such the relative situation of these parties down to the 6th day of June, 1885, when an act was passed by the Legislature of the State amending the charter of the city in many respects enumerated therein. The portion brought into view by this action is section 15, in these words:

"None of the provisions of this act hereinbefore contained shall affect any sale for taxes, assessments, or water rates heretofore made in said city, or the rights of the parties or the proceedings thereunder, but the same shall remain the same as though this act had not been passed: Provided, however, That no action or special proceeding shall hereafter be brought or maintained against the city of Brooklyn or the registrar of arrears of said city to compel the execution or delivery of a lease upon any sale for taxes, assessments, or water rates made more than eight years prior to the passage of this act, and notice thereof filed in the office of the registrar of arrears, but this provision shall not operate to extend any statute of limitation now applicable in such cases; and after the expiration

of six months from the passage of this act it shall be the duty of the registrar of arrears to cancel in his office all such sales made more than eight years prior to the passage of this act, upon which no leases have been given, and every action commenced and
33 notice thereof filed within the period hereinbefore limited therefor, and thereupon the lien of all such certificates of sale shall cease and determine."

It is the claim of these plaintiffs that the second clause of this section of the law annuls their contracts, and is therefore void, because it is interdicted by that portion of the Constitution which interdicts the passage of laws impairing the obligation of contracts.

If the fact assumed in this proposition was established the result claimed would necessarily follow; but the difficulty encountered by the plaintiffs is that the assumption cannot be maintained. The section of the law construed together does not operate on the rights of the plaintiffs, except to preserve them. It imposes on the registrar of arrears a duty to cancel in his office all such sales made more than eight years prior to the passage of the law, where no leases have been given six months after the passage of the act. This is a short statute of limitation, affording the plaintiffs six months from its passage on which to exercise their rights to demand their leases.

After the expiration of that period their rights were barred and their sales were required to be cancelled. The statute left a substantial remedy remaining in the hands of the plaintiffs, and therefore the obligation of their contract was not impaired. Within the meaning and prohibition of the fundamental law, that restraint extends to the impairment and suspension of the duty of performance of the contract and not to a modification of the remedy in the wisdom of the Legislature.

Suspension preserves

The limitations prescribed by positive law constitute no part of a contract, and legislation which merely alters or limits a remedy, but yet preserves an existing remedy in substance in the ordinary course of justice is not violative of the organic law.

Cooley's Constitutional Limitations, 358.

34 Before the passage of the law under consideration the claims of a tax purchaser might be barred by lapse of time, and all that this effects is the curtailment of that period.

Our views coincide with the opinion of Mr. Justice Cullen, delivered at the special term, and the judgment there rendered should be affirmed with costs.

Barnard, P. J., concurs.

35 *Remittitur.* *May* 13, 1887.

STATE OF NEW YORK, *ss:*

Court of Appeals.

Pleas in the court of appeals held at the capitol, in the city of Albany, on the 13th day of May, in the year of our Lord one thous-

and eight hundred and eighty-seven, before the judges of said court.
Witness the Hon. William C. Ruger, chief judge, presiding.

E. O. PERRIN, *Clerk.*

36 *Judgment of the Court of Appeals.*

WILLIAM M. MACFARLANE, Appellant,
ag'st
THEODORE F. JACKSON, as Registrar of Arrears of the City of Brooklyn, Respondent.

Be it remembered that on the 18th day of December, in the year of our Lord one thousand eight hundred and eighty-six, William M. Macfarlane, the appellant in this action, came here into the court of appeals, by James Stikeman, his attorney, and filed in the said court a notice of appeal and return thereto from the judgment of the general term of the supreme court of the State of New York; and Theodore F. Jackson, registrar, &c., the respondent in said action, afterwards appeared in said court of Appeals, by Almet F. Jenks, his attorney.

Which said notice of appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon the said court of appeals having heard this cause argued by Mr. John J. Townsend, of counsel for appellant, and by Mr. Almet F. Jenks, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the judgment of the supreme court appealed from in this action be in all things affirmed.

And it was further ordered and adjudged that the respondent recover against the appellant costs of appeal to this court.

37 And it was also further ordered that the record aforesaid and the proceedings in this court be remitted to the said supreme court there to be proceeded upon according to law.

Therefore it is considered that the said judgment be in all things affirmed, with costs as aforesaid, and stand in full force, strength, and effect.

And hereupon as well as the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid by them given in the premises are by the said court of appeals remitted into the supreme court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court before the justices thereof, &c.

W. H. SHANKLAND,
Dep'y Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
ALBANY, *May 13th*, 1887.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals with the papers originally filed therein attached thereto.

[SEAL.] W. H. SHANKLAND,
Deputy Clerk.

Endorsed: "Filed May 21, 1887."

38 At a special term of the supreme court, held at the court house, in the county of Kings, on the 21st day of May, 1887.

Present: Hon. Willard Bartlett, justice.

Order on Remittitur.

WILLIAM M. MACFARLANE, Appellant,
against
THEODORE F. JACKSON, as Registrar of Arrears of the City of Brooklyn, Respondent.

On reading and filing the remittitur of the court of appeals to this court in this action, affirming the judgment appealed from with costs, and on motion of Almet F. Jenks, attorney for the defendant—

It is ordered that the judgment of the court of appeals in this action be, and the same hereby is, made the judgment of this court.

39 [Endorsed:] Supreme court. William M. Macfarlane against Theodore F. Jackson, as registrar, etc. Order on remittitur. Almet F. Jenks, def't's attorney, city hall, Brooklyn. Filed May 21st, 1887.

40 At a court of appeals of the State of New York, held at the village of Saratoga Springs, on the 20th day of June, A. D. 1887.

Present: Hon. William C. Ruger, chief judge, presiding.

Certificate of the Decision of a Federal Question.

WILLIAM M. MACFARLANE, Appellant,
against
THEODORE F. JACKSON, as Registrar of Arrears of the City of Brooklyn, Respondent.

It is hereby certified and stated by the court that in the record and proceedings herein was drawn in question the validity of a statute of the State of New York, to wit, the fifteenth section of an act entitled "An act to amend chapter 863 of the laws of 1873, entitled 'An act to amend the charter of the city of Brooklyn and the various amendments thereof,' passed June 6, 1885 and known as chapter 405 of the laws of 1885," on the ground of its being repugnant to the first article of the tenth section of the Constitu-

40½ tion of the United States, as impairing the obligation of contracts, and on the ground of its being repugnant to the fifth article of the amendments to the Constitution of the United States, as depriving the appellant of property without due process of law, and the decision of this court is in favor of the validity of the said statute.

This certificate is made upon the prayer of the appellant, with a request to the supreme court that it be attached to the record, remitted to and on file in the supreme court.

[SEAL.] WM. C. RUGER,
Ch. Judge, Court of Appeals.

Witness:
E. O. PERRIN, *Clerk.*

41 STATE OF NEW YORK, } ss:
County of Kings, }

I, John M. Ranken, clerk of the county court of Kings and clerk of the supreme court of the State of New York, in and for said county (said court being a court of record), do hereby certify that I have compared the annexed with the original certificate of the court of appeals of the State of New York, filed in my office June 28, 1887, and that the same is a true transcript thereof and of the whole of such original.

In testimony whereof, I have hereunto set my hand and affixed the seal of said county and court this 28 day of June, 1887.

[Seal Kings County.]

JOHN M. RANKEN, *Clerk.*

42 [Endorsed:] Court of appeals. William M. Macfarlane against Theodore F. Jackson, as registrar, etc. Certificate of decision of a Federal question. James Stikeman, attorney for plaintiff, No. 18 Broadway, New York.

43 *Bond.*

In the Supreme Court of the United States of America.

WILLIAM M. MACFARLANE, Plaintiff in Error,
against
THEODORE F. JACKSON, as Registrar of Arrears of the City of Brooklyn, Defendant in Error.

Know all men by these presents that we, William M. Macfarlane and George S. Wheeler, of the city of Brooklyn, county of Kings, and State of New York, are held and firmly bound unto the above-named Theodore F. Jackson, as registrar of arrears of the city of Brooklyn, his successors and assigns, in the sum of five hundred dollars, to be paid to the said Theodore F. Jackson, as registrar of arrears of the city of Brooklyn, his successors or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 29th day of June, one thousand eight hundred and eighty-seven.

Whereas the above-named William M. Macfarlane has prosecuted to the Supreme Court of the United States a certain writ
44 of error to reverse the judgment rendered by the judges of the court of appeals of the State of New York against the said plaintiff in error in favor of the said defendant in error:

Now, therefore, the condition of this obligation is such that if the above-named William M. Macfarlane shall prosecute the said writ of error to effect, and, if he fail to make his plea good, answer all costs which, upon an affirmance of said judgment or upon a dismissal of said writ of error, may be adjudged or decreed to the said Theodore

F. Jackson, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

W. M. MACFARLANE. [L. S.]
GEO. S. WHEELER. [L. S.]

Sealed and delivered in the presence of—
H. RODMAN HAGNER.

STATE OF NEW YORK, }
County of Kings, } ss:

On the 29th day of June, 1887, before me personally came William M. Macfarlane and George S. Wheeler, both known to me to be the individuals described in and who executed the foregoing bond, and severally acknowledged that they executed the same.

[NOTARIAL SEAL.] H. RODMAN HAGNER,
Notary Public for Kings Co.

45 STATE OF NEW YORK, }
County of Kings, } ss:

William M. Macfarlane and George S. Wheeler, being duly sworn, say, each for himself, that he is a resident of the city of Brooklyn and a freeholder in the State of New York, and that he is worth the sum of one thousand dollars over and above all his debts and liabilities and exclusive of property exempt from execution.

W. M. MACFARLANE.
GEO S. WHEELER.

Sworn to before me this 29th day of June, 1887.

[NOTARIAL SEAL.] H. RODMAN HAGNER,
Notary Public for Kings Co.

The foregoing bond is approved.

SAM'L BLATCHFORD, *A. J. S. C.*

To Theodore F. Jackson, above named:

Please take notice that the bond of which the foregoing is a copy was this day duly filed in the office of the clerk of the county of Kings, in the State of New York.

Yours, etc., JOHN J. TOWNSEND,
Att'y for Pl'ff in Error.

Dated July 8th, 1887.

46 [Endorsed:] Supreme Court of the United States. William M. Macfarlane, plaintiff in error, against Theodore F. Jackson, as registrar, etc. Copy bond. John J. Townsend, attorney.

Endorsed on cover: New York supreme court. No. 981. William M. Macfarlane, plaintiff in error, *vs.* Theodore F. Jackson, as registrar of arrears of the city of Brooklyn. Filed July 23, 1887.